

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BUCK'S, INC., a Nebraska corporation,)	8:08CV519
)	
Plaintiff,)	
)	
v.)	
)	MEMORANDUM AND ORDER
BUC-EE'S, LTD., a Texas limited liability)	
corporation,)	
)	
Defendant.)	

This matter is before the court on defendant Buc-ee's, Ltd.'s motion for reconsideration and alternative motion for leave to file an interlocutory appeal and stay. Filing No. [31](#).

The court previously entered a memorandum and order denying defendant's motion to dismiss for lack of personal jurisdiction, improper venue, and failure to state a claim. Filing No. [29](#). The defendant asserts that the court committed manifest error in ruling: 1) sufficient minimum contacts are present for personal jurisdiction over the defendant; 2) venue is proper in this judicial district; 3) the *Noerr-Pennington* doctrine does not apply to the plaintiff's claims; and 4) judicial privilege is inapplicable. The court has considered the defendant's motion, the supporting and opposing briefs, and the relevant law. The court finds the defendant's arguments without merit. Accordingly, the defendant's motion for reconsideration is denied.

The defendant requests leave to file an interlocutory appeal pursuant to [28 U.S.C. § 1292\(b\)](#) and a stay of this action pending the resolution of an appeal. The court has reviewed the defendant's motion and determines there is no controlling question of law as to which there is substantial ground for difference of opinion, and that an immediate appeal

would not advance the ultimate termination of this litigation. See [28 U.S.C. § 1292\(b\)](#). Furthermore, the defendant has failed to meet the burden of establishing that this is an exceptional case warranting immediate review. See [Union County, Iowa v. Piper Jaffray & Co., 525 F.3d 643, 646 \(8th Cir. 2008\)](#). Accordingly, the defendant's motion for leave to file an interlocutory appeal and stay is denied.

THEREFORE, IT IS ORDERED that defendant's motion for reconsideration and motion for leave to file interlocutory appeal and stay, Filing No. [31](#), is denied.

DATED this 10th day of August, 2009.

BY THE COURT:

s/ Joseph F. Bataillon
Chief District Judge